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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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8 IN RE: TFT-LCD (FLAT PANEL) ANTITRUST  
9 LITIGATION

No. M 07-1827 SI  
MDL No. 1827

10 This Order Relates To:

No. C 09-4997 SI

11 AT&T MOBILITY LLC, *et al.*,

12 Plaintiffs,

13 v.

14 AU OPTRONICS CORPORATION, *et al.*,

15 Defendants.  
16

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR LEAVE TO FILE A  
THIRD AMENDED COMPLAINT**

17 Now before the Court is a motion for leave to file a third amended complaint filed by plaintiffs  
18 AT&T Mobility LLC, AT&T Corp., AT&T Services, Inc., BellSouth Telecommunications, Inc., Pacific  
19 Bell Telephone Company, AT&T Operations, Inc., AT&T DataComm, Inc., and Southwestern Bell  
20 Telephone Company (collectively, "AT&T"). Pursuant to Civil Local Rule 7-1(b), the Court finds this  
21 matter suitable for decision without oral argument and therefore VACATES the hearing currently  
22 scheduled for September 9, 2011. Having considered the arguments presented in the moving papers,  
23 the Court hereby GRANTS plaintiffs' motion.

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25 **BACKGROUND**

26 AT&T filed this antitrust action in 2009, seeking to "recover damages . . . for the injuries [it]  
27 suffered as a result of defendants' conspiracy to fix, raise, maintain and stabilize the prices of LCD  
28 Panels." Second Amended Complaint, ¶12. AT&T's complaint includes claims under the Sherman Act,

1 15 U.S.C. § 1, and under the laws of a number of different states. FAC at ¶¶239-77.

2 On August 5, 2011, AT&T filed the current motion, seeking leave from the Court to file a third  
3 amended complaint (“TAC”). The TAC does not significantly alter the legal theories contained in  
4 AT&T’s second amended complaint. Instead, AT&T seeks to add a number of additional defendants  
5 to its lawsuit: Sanyo Consumer Electronics Co., Ltd (“Sanyo”); Samsung SDI Co., Ltd. and Samsung  
6 SDI America, Inc. (collectively, “Samsung”); and Chimei Innolux Corporation.

### 8 LEGAL STANDARD

9 Once a party has amended its complaint, further amendments may only be made with leave of  
10 the court. *See* Fed. R. Civ. P. 15(a)(2). Rule 15(a)(2) provides that “[t]he court should freely give leave  
11 when justice so requires,” which represents a public policy strongly in favor of amendments. *See*  
12 *Chodos v. West Publishing Co.*, 292 F.3d 992, 1003 (9th Cir. 2002) (“It is generally our policy to permit  
13 amendment with ‘extreme liberality’ . . .”). “When considering a motion for leave to amend, a district  
14 court must consider whether the proposed amendment results from undue delay, is made in bad faith,  
15 will cause prejudice to the opposing party, or is a dilatory tactic.” *Id.*

### 17 DISCUSSION

18 AT&T’s motion follows on the heels of a similar motion filed by Motorola in June 2011. *See*  
19 Order Granting Plaintiff’s Motion for Leave to File Third Amended Complaint, Master Docket No. 3137  
20 (July 18, 2011). Like AT&T, Motorola sought leave to amend its complaint to add Sanyo, Samsung,  
21 and Chimei Innolux as defendants. After hearing the proposed new defendants’ strenuous objections  
22 to Motorola’s request, the Court granted Motorola’s motion. *Id.*

23 The responses of Sanyo and Samsung<sup>1</sup> to AT&T’s motion raise largely the same objections as  
24 their responses to Motorola’s motion. They emphasize the voluminous discovery in this litigation, the  
25 looming discovery deadlines, and their limited roles to date in this MDL. They claim that they will be  
26 prejudiced by being included in the litigation at this late hour, and they argue that AT&T unreasonably

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28 <sup>1</sup>The Court GRANTS the motion to intervene filed by Sanyo and Samsung. Chimei Innolux has not sought to intervene or otherwise opposed AT&T’s motion.

1 delayed its request to add them as defendants.

2 As it did with Motorola's motion, however, the Court finds that the proposed new defendants  
3 will not be overly prejudiced by their late addition to this case. The lawsuits that comprise this MDL  
4 are all based on the same core set of facts; much of the work in defending one lawsuit will be common  
5 to defending all cases. Further, the proposed new defendants will join a number of large, sophisticated  
6 defendants, all of which are well-acquainted with this MDL. The proceedings in this MDL to date have  
7 established that the interests of the defendants overlap to a significant degree. The burden on the new  
8 defendants will be substantially limited based upon their ability to cooperate with these existing  
9 defendants.<sup>2</sup>

10 The Court also agrees with AT&T that the proposed new defendants' claims of prejudice are  
11 contradicted by the limited actions they have taken in the Motorola matter. Although all of the proposed  
12 new defendants strenuously objected to their inclusion in the Motorola case, they have sought only a  
13 small amount of discovery from Motorola. Sanyo, for example, has served only one set of  
14 interrogatories and a single document request on Motorola. *See* Declaration of Nathaniel J. Wood in  
15 Support of Plaintiffs' Reply, ¶4. And Samsung has not served any discovery in the Motorola action.  
16 *Id.* at ¶5.

17 The Court also rejects the intervenors' claims of undue delay. Given that AT&T's motion raises  
18 the same issues as Motorola's motion, it would have been preferable for AT&T to present its motion  
19 at the same time. Once Motorola had filed its motion, however, it was reasonable for AT&T to wait for  
20 the outcome before proceeding on its motion to amend. Further, AT&T may have legitimately revisited  
21 its position at the time the discovery schedule changed in mid-July.

22 Finally, Samsung requests that this case be taken off the "Track One" schedule if the Court  
23 allows it to be added as a defendant. Given that the parties have been proceeding under the current  
24 deadlines for well over a year, however, the Court declines this request.

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27 <sup>2</sup>The new defendants also need not fear a flood of "Track One" plaintiffs seeking to add them  
28 as defendants. No further motions to amend are pending, and, absent compelling circumstances, the  
Court would consider further "Track One" motions to amend untimely.

**CONCLUSION**

For the foregoing reasons and for good cause shown, the Court hereby GRANTS plaintiffs' motion for leave to file a third amended complaint. Docket Nos. 135, 138, and 141 in 09-4997; Docket Nos. 3232, 3313, and 3315 in 07-1827.

**IT IS SO ORDERED.**

Dated: September 7, 2011

  
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SUSAN ILLSTON  
United States District Judge